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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 620

JIM LAING
Petitioner

v.

COMMONWEALTH OF VIRGINIA
Respondent

PETITION TO REHEAR ORDER OF COURT DENYING WRIT OF CERTIORARI

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TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Jim Laing, prays for a rehearing of the order of this Honorable Court on the petition for a writ of certiorari to the Supreme Court of Appeals of Virginia (Appendix).

The following ground, although available to the petitioner, was not previously fully presented.

On the 28th day of July, 1961, the circuit court for the county of Giles, Virginia, entered a judgment which did not dispose of the criminal charge placed against petitioner. For convenience of the Court we set out, *verbatim*, said order:

> "This day came the attorney for the Commonwealth, the attorney for the defendant, and the defendant, who stands charged with a violation of law, to-wit: having in possession one sheep-killing dog, in violation of Virginia Code § 29-197, appeared in pursuance his recognizance, and plead not guilty to the warrant in this case.
>
> Whereupon, counsel for the defendant moved the Court to dismiss the appeal and quash the proceedings upon the following grounds:
>
> (1) That the Judge of the County Court failed to designate an officer to kill the alleged sheep-killing dog, as directed and provided for in said Virginia Code § 29-197, as follows: " . . . and if it shall appear that such a dog is a livestock killer, or has committed any of the depredations mentioned in this section, the dog shall be ordered killed immediately, which the warden, or other officer designated by the trial justice to act, shall do. . . . "; that the order of the County Court is null and void for the reason that no valid judgment was rendered by said County Court upon which an appeal could be perfected.
>
> (2) That it is not unlawful to possess a sheep-killing dog and there exists no law in this Commonwealth prohibiting said act; that the defendant is charged in the warrant of an act which is neither prohibited nor unlawful, and therefore, the warrant is bad.

And the Court, having considered defendant's motion, overruled said motion, to which action said defendant, by counsel, duly excepted.

Thereupon, the attorney for the Commonwealth and defendant, by counsel, waived a trial by jury, pursuant to Virginia Code § 19.2-193, and elected and requested that all matters of law and fact be submitted to the Court for hearing and determination without the intervention of a jury.

Whereupon, after hearing the evidence of the Commonwealth and the defendant, the Court doth find and determine that the German Shepherd or Police Dog owned by the said Jim Laing is a livestock killer, having been found in the act of killing, injuring and worrying sheep; and it is ORDERED that the said dog be killed immediately, and, the Dog Warden of Giles County now being ill, the Court doth designate John E. Hopkins, Sheriff of Giles County, to act in the killing *and* said dog.

Thereupon, the defendant, by counsel, moved to set aside the verdict of the Court on the grounds that the same is contrary to the law and evidence for the reasons hereinbefore assigned, which motion the Court overruled, and the defendant, by counsel, duly excepted.

It is therefore considered by the Court that the said dog be killed immediately by the Sheriff of Giles County, Virginia.

Thereupon, the defendant, by counsel, signifying his intention to apply to the Supreme

Court of Appeals of Virginia for a writ of error from the judgment of this Court; execution of the above judgment is stayed for a period of seventy (70) days from the date of said judgment to enable the defendant to prepare and file his notice of appeal and assignments of error."

There has been no disposition of the criminal charge made against petitioner. As a matter of record, he was and still is charged with an act which is neither prohibited nor unlawful, and it is herein respectfully and emphatically maintained that there remains upon petitioner the stigma of a criminal charge upon which there has been no due acquittal and discharge of him by respondent as required under and by virtue of the due process clause contained in the Fourteenth Amendment to the Constitution of the United States.

Petitioner respectfully submits that this Honorable Court may have inadvertently overlooked the solemn judgment order of the circuit court of Giles County, Virginia, entered on July 28, 1961, and herein humbly prays that this matter be reheard upon the grounds hereinabove set out.

Respectfully submitted,

ALEX N. APOSTOLOU
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Roanoke, Virginia

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524 Washington Avenue, S.W.
Roanoke, Virginia

Attorneys for Petitioner

CERTIFICATION AND PROOF OF SERVICE

I, Alex N. Apostolou, an attorney of record for Jim Laing, petitioner herein, do hereby certify that this petition to rehear is presented in good faith and not for delay; that the petition herein is restricted to the ground heretofore specified and that on the 5th day of February, 1963, I served a copy of the foregoing petition by mailing the same, with first class postage prepaid, to the following counsel of record:

ROBERT Y. BUTTON,
Attorney General
State Library Building
Richmond 19, Virginia

FRANCIS C. LEE,
Assistant Attorney General
State Library Building
Richmond 19, Virginia

Alex N. Apostolou

Subscribed and sworn to before me at Roanoke, Virginia, this 5th day of February, 1963.

Notary Public

My commission expires:

My Commission Expires
May 2, 1964